THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 26496 of 2006

22-12-2006

Between:-

Meka Chalapathi Rao and five others.

Petitioners

And

The Government of Andhra Pradesh, rep., by its Secretary, Revenue Department, Secretariat, Hyderabad and five others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.26496 of 2006

Oral order:

The petitioners, in substance, seek declaration and enforcement of an easementary right over a Puntha (a path way) apparently belonging to Jetlapalem village, Pentapadu mandal, West Godavari district. The petitioners claim to be among about 2,500 ryots who are using Puntha since immemorial for their agricultural operations and for ingress and egress to their fields through the said Puntha. They assert that the respondent Nos. 1 to 4, in particular the fourth respondent has issued 'residential plot possession confirmation certificates' to certain purportedly landless poor persons on the Puntha depriving the petitioners and other ryots potentially of their easementary right of user of the Puntha.

The petitioners allege that earlier lands of the fifth and sixth respondents were acquired for the purpose of providing house sites to the weaker sections of the village by a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') dated
27-06-2006 followed by a declaration under Section 6 of the Act dated 27-07-2006 duly dispensing with the enquiry under Section 5-A of the Act by invoking an urgency clause. However without proceeding with the aforesaid acquisition process, for reasons extraneous, the respondent Nos. 1 to 4 have now proceeded to allot/assign plots on the Puntha to the landless poor persons and even without any orders of assignment, 'possession certificates' were granted by the fourth respondent, is the allegation.

The petitioners have also submitted a representation to the fourth respondent on 21-11-2006 not to disable them from the user of Puntha. On 21-11-2006, the fifth respondent requisitioned the fourth respondent to furnish information as to the 132 pattas reported to have been issued for house sites in respect of the plots on the Puntha. The petitioners assert that despite the representation dated 21-11-2006, the fourth respondent has not furnished the information.

In respect of the grievance as to the failure of the fourth respondent to furnish information despite the

requisition dated

21-11-2006 under the provisions of the Right to Information Act, 2005 (for short 'the Act, 2005'), the petitioners are at liberty to pursue appropriate proceedings against the respondents for transgression of the provisions of the Act, 2005 including for prosecution of the fourth respondent as provided under the Act, 2005 for failing to provide the information which the petitioners are entitled to have under the provisions of the Act.

In respect of the substantive grievance of the petitioners that the Government and other official respondents have allotted plots to members of the weaker sections of the society on the Puntha thus depriving them from right to ingress and egress to their fields thereby transgressing an easementary right of the petitioners and other ryots, the petitioners must more appropriately pursue remedies before the civil court of competent jurisdiction by seeking declaration of the asserted easementary right and seek appropriate reliefs consequent on such substantive relief claimed. The writ petition is not an appropriate vehicle for assertion of an easementary right. Neither the government nor any of the official respondents are immune to the claim of civil rights by the petitioners nor are the official respondent Nos. 1 to 4 beyond the jurisdiction of the civil court of competent jurisdiction. As the existence of an easementary right as

claimed by the petitioners is substrated on a factual foundation which could be potentially disputed, such disputed questions of fact must necessarily be determined by the civil court of competent jurisdiction and not under Article 226 of the Constitution of India.

On the analysis above, the writ petition is dismissed with liberty to the petitioner to pursue the appropriate alternative remedy. No costs.

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GODA RAGHURAM, J

Dated:22-12-2006
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